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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO

In re  
PLAN COMPLIANCE GROUP, LTD.,  
  
Debtor.

Case No. 3:07-cv-03713-MJJ

Assigned to: Hon. Martin J. Jenkins

**[PROPOSED] ORDER RE DEFENDANT'S  
MOTION FOR WITHDRAWAL OF  
REFERENCE**

JOHN T. KENDALL, Chapter 7 Trustee,  
  
Plaintiff,  
  
vs.  
  
HARTFORD FIRE INSURANCE  
COMPANY, a Connecticut Corporation,  
  
Defendant.

**Date:** 12/4/07  
**Time:** 9:30 a.m.  
**Ctrm:** 11

**I. BACKGROUND**

On May 18, 2007, Plaintiff John T. Kendall ("Plaintiff"), the Chapter 7 Trustee in the matter captioned "In re Plan Compliance Group, Ltd.," Case No. 05-49454 RN7 of the United States Bankruptcy Court, Northern District of California, Oakland (the "PCG Bankruptcy"), commenced an adversary proceeding against Defendant HARTFORD FIRE INSURANCE COMPANY ("HARTFORD"). In its "Complaint for Declaratory Relief" (the "Adversary Complaint"), Plaintiff alleges that HARTFORD insured PCG against employee fraud and

1 dishonesty (Adversary Complaint ¶ 9) and HARTFORD is contractually obligated to indemnify  
 2 PCG for losses arising from a fraudulent scheme that was carried out before the filing of the PCG  
 3 Bankruptcy. (Adversary Complaint ¶¶ 9, 17-18). The gravamen of the Adversary Complaint is  
 4 breach of contract and the relief sought is a payment of money under that contract. (Adversary  
 5 Complaint ¶¶ 17-21, Prayer A.) HARTFORD moves, pursuant to 28 U.S.C. § 157(d), to withdraw  
 6 reference of this matter to the bankruptcy court.

## 7 **II. LEGAL STANDARD**

8 The District Court has original jurisdiction over all cases arising under Title 11 of the  
 9 Bankruptcy Code, but may "refer" bankruptcy cases to a bankruptcy judge for the district  
 10 automatically. This automatic reference includes (1) all cases under Title 11; (2) all core  
 11 proceedings arising under Title 11; and (3) non-core proceedings arising under or related to Title  
 12 11. 28 U.S.C. § 157. The authority to refer cases to the bankruptcy court is tempered by the  
 13 provision that "the reference may or shall be withdrawn in certain situations." *In re Vicars Ins.*  
 14 *Agency, Inc.*, 96 F.3d 949, 951 (7th Cir. 1996). 28 U.S.C. § 157(d) states that reference of a  
 15 matter to bankruptcy court may be withdrawn:

16 The district court may withdraw, in whole or in part, any case or  
 17 proceeding referred under this section, on its own motion or on  
 18 timely motion of any party, for cause shown. The district court  
 19 shall, on timely motion of a party, so withdraw a proceeding if the  
 court determines that resolution of the proceeding requires  
 consideration of both Title 11 and other laws of the United States  
 regulating organizations or activities affecting interstate commerce.

20 28 U.S.C. § 157(d).

21 "Whether to withdraw a case under § 157(d) is within this Court's discretion. The Ninth  
 22 Circuit has said that the court should consider 'the efficient use of judicial resources, delay and  
 23 costs to the parties, uniformity of bankruptcy administration, the prevention of forum shopping,  
 24 and other related factors.'" *In re Daewoo Motor America, Inc.*, 302 B.R. 308, 310 (C.D. Cal.  
 25 2003) (citing *Security Farms v. Int'l Bhd. of Teamsters*, 124 F.3d 999, 1008 (9th Cir. 1997)).

26 "Actions that do not depend on bankruptcy laws for their existence and that could proceed  
 27 in another court are considered 'non-core'" under 28 U.S.C. § 157. *See, e.g., Security Farms v.*  
 28 *Int'l Bhd. of Teamsters*, 124 F.3d 999, 1008 (9th Cir. 1997). If the proceeding is non-core, then

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1 "the bankruptcy court may not enter final judgments without the consent of the parties, and its  
2 findings of fact and conclusions of law in noncore matters are subject to de novo review by the  
3 district court." *Harris Pine Mills v. Mitchell*, 44 F.3d 1431, 1436 (9th Cir. 1995).

4 Actions to enforce pre-bankruptcy petition insurance contracts are typically considered  
5 non-core proceedings. See, e.g., *Matter of U.S. Brass Corp.*, 110 F.3d 1261, 1268-69 (7th Cir.  
6 1997); *In re Daewoo Motor America, Inc.*, 302 B.R. 308, 311 (C.D. Cal. 2003).

7 HARTFORD has a constitutional right to, and has not waived its right to a trial by jury in  
8 this matter. (U.S.Const.Amend. VII.) Where "there is a right to jury trial in a non-core matter,  
9 that factor may weigh heavily in favor of withdrawing the reference so as to give the parties an  
10 opportunity for a jury trial in the district court." *Daewoo Motor*, above, 302 B.R. at 314 (citing  
11 *Orion Pictures Corp. v. Showtime Networks*, 4 F.3d 1095, 1101 (2d Cir. 1993)). "[B]ankruptcy  
12 courts cannot conduct jury trials on noncore matters, where the parties have not consented." *In re*  
13 *Cinematronics, Inc.*, 916 F.2d 1444, 1451 (9th Cir. 1990).

14 Turning to whether this Court has jurisdiction of this proceeding, 28 U.S.C. § 1334 states  
15 in pertinent part:

16 (b) Notwithstanding any Act of Congress that confers exclusive  
17 jurisdiction on a court or courts other than the district courts, the  
18 district courts shall have original but not exclusive jurisdiction of all  
civil proceedings arising under title 11, or arising in or related to  
cases under title 11.

19 28 U.S.C. § 1334(b).

20 Related matters are matters which conceivably have an effect on the bankruptcy estate. *In*  
21 *Re World Solar*, 81 B.R. 603 (S.D. Cal. 1988); see also, *Drexel Burnham Lambert Group v.*  
22 *Vigilant Ins.*, 130 B.R. 405 (S.D.N.Y. 1991).

### 23 **III. ANALYSIS**

24 This matter is not a core proceeding, but a non-core proceeding. That is, Plaintiff alleges  
25 that HARTFORD issued an insurance contract before the bankruptcy filing. Further, the  
26 Adversary Complaint arises under California state law against a non-debtor / non-creditor  
27 concerning a pre-bankruptcy petition contract. Accordingly, it is a non-core proceeding over  
28 which the bankruptcy court lacks exclusive jurisdiction.

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1 Further, HARTFORD anticipates demanding a jury trial and will not consent to the  
2 bankruptcy court hearing a jury trial in this matter. As such, the bankruptcy court cannot conduct  
3 the jury trial of this non-core matter.

4 This Court has jurisdiction pursuant to 28 U.S.C. § 1334(b). The Adversary Complaint  
5 against HARTFORD is a non-core proceeding which is related to the bankruptcy proceeding since  
6 any recovery by the Trustee could constitute potential assets of the estate. Additionally, this Court  
7 has jurisdiction based on diversity of the parties.

8 **IV. CONCLUSION**

9 After considering the HARTFORD's motion, together with the respective accompanying  
10 exhibits thereto, IT IS HEREBY ORDERED that, pursuant to 28 U.S.C. § 157(d), reference of this  
11 matter to the bankruptcy court is withdrawn.

12 DATED: October \_\_, 2007

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14 \_\_\_\_\_  
15 The Honorable Martin J. Jenkins  
16 UNITED STATES DISTRICT COURT  
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